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11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **SAN FRANCISCO DIVISION**

14 IN RE: CATHODE RAY TUBE (CRT)
ANTITRUST LITIGATION

Master File No. CV-07-5944-SC

MDL No. 1917

16 **ERRATA TO REPLY BRIEF IN SUPPORT OF**
17 **INDIRECT PURCHASER PLAINTIFFS'**
18 **MOTION FOR CLASS CERTIFICATION**

This Document Relates to:

ALL INDIRECT PURCHASER ACTIONS

Date: TBD

Time: TBD

Before: Hon. Charles A. Legge (Ret.)
Special Master

The Honorable Samuel Conti

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23 **REDACTED PER COURT ORDER (D.E. 1587)**
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1 Indirect Purchaser Plaintiffs hereby submit this Errata in order to make the following corrections
2 to the Reply Brief In Support Of Indirect Purchaser Plaintiffs' Motion For Class Certification
3 ("Reply") submitted on February 15, 2013:

- 4 • Page 21, lines 17-18 reads: Netz Rebuttal Decl. at 9. Should read: Netz Rebuttal Decl. at
5 10.

- 6 • Page 21, line 19 reads: *See id.* at 9-10. Should read: *See id.*

- 7 • Page 21, line 22 reads: *Id.* at 10-11. Should read: *Id.* at 12-13.

- 8 • Page 21, line 26 reads: *Id.* at 13. Should read: *Id.* at 14.

- 9 • Page 27, n.17, lines 25-28 reads: [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED] Should read: [REDACTED]

16 [REDACTED]

17 [REDACTED]

- 18 • Page 34, line 3 reads: *See §II.6, supra.* Should read: *See §II.B, supra.*

19 Corrected pages 21, 27 and 34 are attached hereto, which may be inserted in place of their current
20 respective pages in the Reply.

21 DATED: February 28, 2013

Respectfully submitted,

22 _____ /s/ *Mario N. Alioto*

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CORRECTED PAGE 21

1 here, there are indictments, significant fines and a guilty plea (*see Memo.* at 5-8). In sum, there
 2 are even more compelling reasons to certify here than there were in *SRAM*.

3 **D. *GPUs* and *Flash* Are Distinguishable.**

4 Defendants rely heavily on *GPUs* and *Flash* to argue that Dr. Netz's methods here have
 5 been rejected by "this Court," that econometricians evaluating antitrust impact should not be
 6 permitted to use aggregated or average data, and that proof of pass-through requires a meticulous
 7 tracing of the each overcharge on each product through all levels of the distribution channel. None
 8 of these arguments have merit.

9 *GPUs* is distinguishable because, as noted by Judge Illston, the DOJ had ended its criminal
 10 investigation without returning indictments. 253 F.R.D. at 500. Here, Samsung SDI has pled
 11 guilty, there is an amnesty applicant and the DOJ investigation continues.

12 *GPUs* is also distinguishable because the court found that "the vast majority of sales were
 13 primarily executed after customized negotiations between wholesalers and either defendant [and] .
 14 . . without regard to a price list;" and, "many of the graphics products sold were particularly
 15 customized to the needs of a specific purchaser [and] could not be interchanged with any other
 16 GPU product sold by defendants." *Id.* at 490-91. Here, in contrast, "CRTs were generally not
 17 designed for a specific customer nor heavily customized for each purchaser." Netz Rebuttal Decl.
 18 at 10. Rather, each Defendant had a small number of major designs with minor variations that
 19 were frequently sold to multiple customers. *See id.* Moreover, the minor variations were of
 20 minimal economic importance, involving very small price differences relative to the substantially
 21 larger price differences seen across the major CRT product attributes that drove pricing (*i.e.*,
 22 application, size, shape). *Id.* at 12-13. Finally, at the design-in stage, where the Defendants
 23 purportedly compete to win supply contracts, CRTs were effectively commodities and
 24 interchangeable because finished-goods makers could readily substitute between CRTs that
 25 required only financially and economically inconsequential modifications prior to production and
 26 sale. *Id.* at 14. In light of the above, Defendants' assertion that Dr. Netz admits that CRTs are
 27 "heavily customized" (Opp. at 6) is untrue.

CORRECTED PAGE 27

1 "Target" Pricing Analysis. [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]

21 Further, as the courts in *LCDs*, *SRAM*, the *Microsoft* cases and innumerable others cited
22 above have found, the use of aggregated or average data in antitrust economics is commonplace
23 and accepted. *See §III.B.3, supra.* Indeed, numerous of Dr. Willig's pricing analyses use similar

25 17 [REDACTED]
26 [REDACTED]
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CORRECTED PAGE 34

1 data. See Netz Decl. at 97-98; Netz Rebuttal Decl. §X.A.2. Dr. Netz utilized data from multiple
2 entities at each level of the CRT distribution channel, including tube distributors, CRT product
3 makers, CRT product distributors and CRT product resellers. See §II.B, *supra*. [REDACTED]

4 [REDACTED]
5 [REDACTED]
6 [REDACTED] See Netz Decl. at 104,
7 Exs. 34, 36, 40-43, Netz Rebuttal Decl. §X.A.2, Ex. RR-34. There is no basis for claiming these
8 data are “tiny” or “unrepresentative.” See *id.*

9 Defendants attempt to mislead the Court by claiming that Dr. Netz’s “study at the retail
10 level . . . analyzed the pricing data of only two retailer-plaintiffs (Costco and Best Buy), while
11 ignoring the price data for most of the major retailer-plaintiffs in this MDL.” Opp. at 24. This is
12 false. [REDACTED]

13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]

17 Defendants also assert that direct action plaintiffs’ (“DAPs”) data in this case should have
18 been examined because those plaintiffs allege in their complaints that “they did not pass on any
19 increases in CRT costs to their customers.” Opp. at 25. In so arguing, however, Defendants rely
20 only on complaint allegations, not facts or evidence. Moreover, [REDACTED]

21 [REDACTED] See Netz Decl. Exs. 34, 35. Also, in response to these criticisms, [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 [REDACTED] Clearly, Dr. Netz’s
26 empirical analyses trump DAPs’ unsupported complaint allegations.
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